



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION IX
75 Hawthorne Street
San Francisco, CA 94105-3901

August 12, 2022

Dannon Dirgo
U.S. Forest Service, Inyo National Forest
351 Pacu Lane, Suite 200
Bishop, CA 93514

Subject: Scoping Comments for the Coyote Flat OHV Recreation Enhancement Project, Inyo County, California

Dear Dannon Dirgo:

The U.S. Environmental Protection Agency has reviewed the U.S. Forest Service's notice to initiate a Draft Environmental Assessment for the above referenced project. Our comments are provided pursuant to the National Environmental Policy Act, Council on Environmental Quality regulations (40 CFR Parts 1500-1508) and our NEPA review authority under Section 309 of the Clean Air Act.

The Forest Service proposes to enhance and develop a sustainable off-highway vehicle route system in Coyote Flat of the White Mountain Ranger District in Inyo County, California. We are providing the enclosed comments to assist in the development of the Draft EA. The topics that the EPA recommends be fully analyzed and disclosed include impacts to water resources, air quality, environmental justice, biological resources, and cumulative impacts, among others.

We appreciate the opportunity to provide comments on this scoping notice and look forward to continued participation in the NEPA process. If you have any questions, please contact me at (415) 972-3961 or samples.sarah@epa.gov.

Sincerely,

Sarah Samples
Environmental Review Branch

Enclosure: EPA's Detailed Scoping Comments

EPA'S DETAILED SCOPING COMMENTS ON THE COYOTE FLAT OHV RECREATION ENHANCEMENT PROJECT, INYO COUNTY, CALIFORNIA – AUGUST 12, 2022

Road/Trail Management

The proposed project identifies approximately 29 miles of National Forest System Roads (NFSR) and 59 miles of National Forest System motorized trails that make up the currently designated motorized route system in the Coyote Flat area. The EPA's areas of concern regarding the construction, maintenance, closure, decommissioning and use of roads and trails include:

- Alteration of hydrologic regimes from road drainage.
- Road stream crossings.
- Road surface erosion.
- Culvert sizing and potential for washout.
- Culvert effects on stream structure.
- Seasonal and spawning habitats.
- Large woody debris recruitment.
- Fire risk from recreation.
- Invasive species proliferation.
- Road encroachment on and fragmentation of stream, riparian, wetland and terrestrial habitats.

The EPA recommends that the road/trail system established through the project reflect long term funding expectations. The Draft EA for this project should discuss resources available to build and/or maintain the proposed facilities. Please compare the relative likelihood for adequate maintenance funding for each of the action alternatives.

Implementation and Administration

We believe providing for motorized recreation that does not harm sensitive environmental resources can be as much a function of the effective implementation and administration of the Motor Vehicle Use Map as it is a function of the specific combination of designated routes. In the Draft EA, include a comprehensive section on implementation and administration. This section should include goals, objectives, and activities (or some other organizational framework). Please clearly define the framework's elements.

Monitoring and Adaptive Management

The EPA endorses the concept of adaptive management whereby effects of implementation activities are determined through monitoring (e.g., ecological and environmental effects). We believe an integrated and comprehensive adaptive management plan is a necessary part of ensuring the long-term environmental sustainability of any project. We recommend that this project's adaptive management plan – or how OHV trail adaptive management will be carried out under other appropriate adaptive management plans – be discussed in the Draft EA. We also recommend that the contribution of OHVs to the sedimentation of streams be highly prioritized in any adaptive management planning. Providing a management trigger related to water quality standards for sediment may help to ensure risks to aquatic resources and water quality are minimized.

Water Quality

Forest roads, trails, and their use are a primary sediment source. Sediment can adversely impact stream water quality and associated beneficial uses, such as fisheries, recreation and drinking water. In general, EPA supports restricting motor vehicle stream crossings to designated areas where aquatic habitats, such as wetlands, springs, seepage areas, riparian areas, stream banks and channels, water quality and

quantity will not be adversely affected. Where roads/trails affect shading of streams, these segments should be evaluated for re-location or closure.

Impaired Waters

Section 303(d) of the Clean Water Act requires that states, territories, and authorized tribes identify waterbodies that do not meet water quality standards and to develop, with EPA approval, Total Maximum Daily Loads for waters identified as impaired to meet established water quality criteria and associated beneficial uses. Because surface water quality degradation is one of the EPA's primary concerns with the proposed project, understanding the setting for the project is critical for preparing a robust impact analysis. It will be important to ensure this project will avoid causing or contributing to the exceedance of water quality standards as such impacts are prohibited and would be considered a "significant" impact under NEPA.

We recommend the Draft EA identify water bodies likely to be impacted by the project, the nature of the potential impacts, and the specific discharges and pollutants likely to impact those waters. The Draft EA should disclose information regarding relevant TMDL allocations for any impaired waters listed on the latest state CWA 303(d) list or Integrated Report, along with the water quality standards and pollutants of concern. As the CWA anti-degradation provisions will also apply, the Draft EA should demonstrate that the proposed action will comply with anti-degradation provisions of the CWA that prevent deterioration of water quality within waterbodies that currently meet water quality standards.

Where a TMDL exists for impaired waters, pollutant loads should comply with the TMDL allocations for point and nonpoint sources. If new loads or changes in the relationships between point and nonpoint source loads are created, we recommend that the Forest Service work with the Lahontan Regional Water Quality Control Board to revise TMDL documents and develop new allocation scenarios that ensure attainment of water quality standards. In addition, where waters are listed as impaired under section 303(d) of the CWA, the Draft EA should describe existing restoration and enhancement efforts for those waters, how the project will coordinate with on-going protection efforts, and any mitigation measures that will be implemented to avoid further degradation of water quality within impaired waters.

Where TMDL analyses for impaired waterbodies within, or downstream of, the project area still needed to be developed, we recommend that proposed activities in the drainages of CWA impaired or threatened waterbodies be either carefully managed to prevent any worsening of the impairment or avoided altogether where such impacts cannot be prevented. For projects that would take place in watersheds with streams not meeting desired future conditions, we recommend including a provision that would require actions to improve riparian, stream, and water quality conditions.

Source Water Protection

Over 60 million people rely on national forests for drinking water. Road construction, maintenance, decommissioning and use may impact these drinking water sources. The 1996 amendments to the Safe Drinking Water Act require federal agencies to protect drinking water sources that they are responsible for. The Draft EA should identify (i) drinking water sources on the forest, (ii) potential contamination of these sources that may result from the proposed action, and (iii) measures that will be taken to protect the water sources.

Clean Water Act Section 404 Applicability

The protection, improvement and restoration of wetlands and riparian areas are a high priority because they increase landscape and species diversity, support many species of western wildlife, and are critical

to the protection of water quality and designated beneficial water uses. Identify the direct, indirect, and cumulative impacts to wetlands in the geographic scope, including impacts from changes in hydrology even if these wetlands are spatially removed from the construction footprint. Include the indirect impacts to wetlands from loss of hydrology from water diversion/transfers, as well as the cumulative impacts to wetlands from future development scenarios based on population and growth estimates.

Confirm with the U.S. Army Corps of Engineers if any jurisdictional waters would require a CWA Section 404 permit for discharge of dredged or fill materials into waters of the United States, including wetlands and “special aquatic sites.” If a permit is required, describe the impacts under individual or nationwide permits authorizing the discharge of fill or dredge materials to waters of the U.S.

Air Quality

Decision-makers will need to understand baseline conditions to ensure project activities, when combined with air quality impacts from non-project sources, do not adversely impact the National Ambient Air Quality Standards or Air Quality Related Values, such as visibility. The Draft EA should provide a robust air quality impact analysis, including ambient air conditions (baseline or existing conditions), NAAQS, criteria pollutant nonattainment areas, and potential air quality impacts of the proposed action, including indirect and cumulative impacts. Such an evaluation is necessary to ensure compliance with state and federal air quality regulations, and to disclose the potential impacts from temporary or cumulative degradation of air quality.

We recommend that the Forest Service characterize existing air quality conditions to set the context for evaluating project impacts, including identification of:

- Sensitive receptors in the vicinity (such as population centers, nonattainment areas, Class I areas and Class II areas with sensitive resources).
- Airshed classifications and monitored baseline conditions (design values) for each criteria pollutant and each relevant AQRV at nearby population centers and available monitoring locations.
- Any regional concerns in the area (e.g., PM_{2.5}, seasonal wildfire smoke).
- Trends in air quality at nearby Class I Areas over the past several years.

Increasingly concentrated OHV use could increase pollutant emissions in valleys that have frequent inversion conditions and periods of poor air dispersion. Two-stroke engines are of particular concern as they mix the lubricating oil with the fuel, expelling both as part of the exhaust. These engines allow up to one third of the fuel delivered to the engine to be passed through the engine and into the environment virtually un-burned. A majority of these hydrocarbons are aromatic hydrocarbons, including polycyclic aromatic hydrocarbons (PAHs), which are considered to be the most toxic component of petroleum products. PAHs are associated with chronic and carcinogenic effects.

We recommend that the Draft EA consider the aforementioned air impacts in relationship to the proposed OHV area. Impacts to areas of mixed use should be of special concern; recreationists on foot, horseback, etc. tend to spend more time in a given area than those utilizing motorized vehicles.

Biological Resources, Habitat, and Wildlife

Threatened and Endangered Species

The Draft EA should discuss how the project would proceed in sensitive areas (i.e., fragile soils, steep slopes, riparian areas, watersheds with severe sedimentation problems, and fish population strongholds). We recommend that the Forest Service work closely with the U.S. Fish and Wildlife Service and the

California Department of Fish and Wildlife to determine potential impacts of the project on plant and wildlife species, especially species classified rare, threatened, or endangered on either state or federal lists. We also recommend that the Draft EA:

- Identify and quantify which species and/or critical habitat might be directly, indirectly, or cumulatively affected by each alternative and mitigate impacts to these species. Emphasis should be placed on the protection and recovery of species due to their status or potential status under the federal or state Endangered Species Act.
- Include general locations of rare or special status plants and disclose how these sites would be managed to avoid impacts on the plants.
- Discuss the project's consistency with existing laws and regulations, including the Migratory Bird Treaty Act and the Bald and Golden Eagle Protection Act.
- Summarize, or include as an appendix in the Draft EA, the USFWS's biological assessment/ opinion. Demonstrate that the preferred alternative is consistent with the biological assessment/ opinion.
- Discuss mitigation measures to minimize impacts to special status species, describe the effectiveness of such measures to protect wildlife, and indicate how they would be implemented and enforced.

Other Wildlife Species

Identify and quantify other wildlife species might be directly, indirectly, or cumulatively affected by each alternative and mitigate impacts to these species.

Invasive Species

In the Draft EA, include measures that are consistent with Executive Order 13112 on Invasive Species. It should include any existing Forest Service direction for noxious weed management, a description of current conditions, and best management practices, which will be utilized to prevent, detect, and control invasives in the project area. Discuss measures that would be implemented to reduce the likelihood of introduction and spread of invasive species within the proposed project area. We encourage the Forest Service to promote integrated weed management, with prioritization of management techniques that focus on non-chemical treatments first, and mitigation to avoid herbicide transport to surface or ground waters. Early recognition and control of new infestations is critical to stop the spread of the infestation and avoid wider future use of herbicides, which could correspondingly have more adverse impacts on biodiversity, water quality, and aquatic resources.

Climate Change

Likely impacts from an increased number of warm days and changes in the amounts and seasonal distributions of rainfall and snowpack include: altered water quantity and quality (temperature); timing of flow; spatial and temporal shifts of vegetative communities and wildlife habitat; increased potential for bark beetles and other insects; potential increases for invasive species resistance to mitigation measures; and increased opportunities for warm weather recreation.

These likely climate change impacts may result in additional challenges for achieving the predicted environmental benefits of any designated OHV system's design features and mitigation measures. Likely climate change impacts should inform adaptive management strategies. Consistent with Executive Order 14008 goals, we encourage measures to provide for diverse, healthy ecosystems that are resilient to climate stressors; require effective mitigation and encourage voluntary mitigation to offset the adverse impacts of projects or actions; reduce greenhouse gas emissions from authorized activities to the lowest practical levels; identify and protect areas of potential climate refugia; reduce barriers to plant migration; and use pollinator-friendly plant species in restoration and revegetation projects.

We also recommend discussing actions to improve forest adaptation to changing environmental conditions, such as selecting resilient native species for replanting. This should anticipate the effects rising temperatures may have on seeds/seedlings growth, the vulnerability of specific species under projected climate conditions in the short and longer term, and any anticipated shift of forest species to more suitable range elevations. The EPA recommends that the Draft EA include a discussion of reasonably foreseeable effects that changes in the climate may have on the proposed project, and what impacts the proposed project will have on climate change consequences. These considerations could help inform the development of measures to improve the resilience of the project.

Cumulative Effects

Cumulative effects are those that are reasonably foreseeable, related to the proposed action under consideration, and subject to the agency's jurisdiction and control. The EPA recommends that the Draft EA consider evaluation of impacts over the entire area of impact and consider the effects of the project when added to other past, present, and reasonably foreseeable future projects in the analysis area. Considering all the actions in this area together would help decision makers to understand more clearly what the cumulative impacts on environmental resources are likely to be. The EPA has issued guidance on how to provide comments on the assessment of cumulative impacts, *Consideration of Cumulative Impacts in EPA Review of NEPA Documents*.¹ The guidance states that to assess the adequacy of the cumulative impact assessment, there are five key areas to consider:

- Resources, if any, that are being cumulatively impacted.
- Appropriate geographic area and the time over which the effects have occurred and will occur.
- All past, present, and reasonably foreseeable future actions that have affected, are affecting, or would affect resources of concern.
- A benchmark or baseline.
- Scientifically defensible threshold levels.

Environmental Justice

Executive Order 12898, "Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations" (February 16, 1994), directs federal agencies to identify and address, as appropriate, disproportionately high and adverse human health or environmental effects of their actions on minority and low-income populations. It further directs agencies to develop a strategy for implementing environmental justice and providing minority and low-income communities access to public information and public participation. As such, we recommend that the Forest Service address adverse environmental effects of the proposed project on these communities and outline measures to mitigate for impacts.

We encourage the Forest Service to use EPA's EJScreen and/or the most recent American Community Survey from the U.S. Census Bureau (i.e., 2016-2020) for the Draft EA to determine the presence of minority and low-income populations. However, it is important to note that minority and low-income can be measured in various ways.

A minority population does not need to meet a 50 percent standard if "the minority population percentage of the affected area is meaningfully greater than the minority population percentage in the general population or other appropriate unit of geographic analysis."² To best illustrate the presence of a

¹ U.S. EPA. May 1999. Consideration Of Cumulative Impacts in EPA Review of NEPA Documents. Available at <https://www.epa.gov/sites/production/files/2014-08/documents/cumulative.pdf>.

² Council on Environmental Quality. December 1997. Environmental Justice: Guidance Under the National Environmental Policy Act. Available at https://www.epa.gov/sites/production/files/2015-02/documents/ej_guidance_nepa_ceq1297.pdf.

minority population, we recommend that the Forest Service analyze block groups, the smallest geographical unit that the U.S. Census Bureau publishes data for. We caution using larger tracts in the analysis, such as counties or cities, as these may dilute the presence of minority populations.

The NEPA Committee of the Federal Interagency Working Group on Environmental Justice has noted that, in some cases, it may be appropriate to use a threshold for identifying low-income populations that exceeds the poverty level.³ For this project, a low-income population may not be accurately recognized by U.S. Census Bureau data as it does not account for California's housing costs or other critical family expenses and resources. For example, the California Department of Public Health suggests that "200% of the federal poverty level (FPL) is a more realistic measure of financial hardship than the official 100% FPL" due to California's high cost of living.⁴ Therefore, we recommend that the Forest Service consider using a 200% FPL when analyzing low-income populations.

After the Forest Service has determined if minority and low-income populations exist in the project area, we recommend that the Draft EA discuss whether these communities would be potentially affected by individual or cumulative actions of the proposed action. We also recommend addressing whether any of the alternatives would cause any disproportionate adverse impacts, such as higher exposure to toxins; changes in existing ecological, cultural, economic, or social resources or access; cumulative or multiple adverse exposures from environmental hazards; or community disruption.

If it is determined that minority and low-income populations may be disproportionately impacted, describe in the Draft Ea the measures taken by the Forest Service to fully analyze the environmental effects of the action on minority communities and low-income populations and identify potential mitigation measures. Clearly identify a monitoring and adaptive management plan to ensure that mitigation is effective and successful.

Present opportunities for affected communities to provide input into the NEPA process. In the Draft Ea, include information describing what was done to inform these communities about the project and the potential impacts it will have on their communities (notices, mailings, fact sheets, briefings, presentations, translations, newsletters, reports, community interviews, surveys, canvassing, telephone hotlines, question and answer sessions, stakeholder meetings, and on-scene information), what input was received from the communities, and how that input was utilized in the decisions that were made regarding the project.

Consultation with Tribal Governments

It is important that formal government-to-government consultation take place early in the scoping phase of the project to ensure that all issues are adequately addressed in the Draft EA. The principles for interactions with tribal governments are outlined in the presidential "Memorandum on Government-to-Government Relations with Native American Tribal Governments" (April 29, 1994) and Executive Order 13175, "Consultation and Coordination with Indian Tribal Governments" (November 6, 2000).

³ Federal Interagency Working Group on Environmental Justice & NEPA Committee. March 2016. Promising Practices for EJ Methodologies in NEPA Reviews. Available at: https://www.epa.gov/sites/production/files/2016-08/documents/nepa_promising_practices_document_2016.pdf.

⁴ California Department of Public Health. April 2019. Poverty and Health: Healthy Communities Data and Indicators Project, Office of Health Equity (Factsheet). Available at <https://data.chhs.ca.gov/dataset/4ea80791-c308-4026-8a94-0e9070b53929/resource/ea66eef9-d854-4792-a587-636579780481/download/hci-one-page-poverty-fact-sheet-june-2019-lm.pdf>.

In the Draft EA, summarize the results of tribal consultation and identify the main concerns expressed by tribes (if any), and how those concerns were addressed. As a resource, we recommend the document *Tribal Consultation: Best Practices in Historic Preservation*,⁵ published by the National Association of Tribal Historic Preservation Officers.

National Historic Preservation Act

Consultation for tribal cultural resources is required under Section 106 of the National Historic Preservation Act. Historic properties under the NHPA are properties that are included in the National Register of Historic Places or that meet the criteria for the NRHP. Section 106 of the NHPA requires a federal agency, upon determining that activities under its control could affect historic properties, to consult with the appropriate State Historic Preservation Office/Tribal Historic Preservation Office. Under NEPA, any impacts to tribal, cultural, or other treaty resources must be disclosed in the Draft EA. Section 106 of the NHPA requires that federal agencies consider the effects of their actions on cultural resources, following the regulation at 36 CFR Part 800.

In the Draft EA, discuss how the Forest Service would avoid or minimize adverse effects on the physical integrity, accessibility, or use of cultural resources or archaeological sites, including traditional cultural properties, throughout the project area. Clearly discuss mitigation measures for archaeological sites and TCPs. We encourage the Forest Service to append any Memoranda of Agreements to the Draft EA, after redacting specific information about these sites that is sensitive and protected under Section 304 of the NHPA. We also recommend providing a summary of all coordination with Tribes and with the State and Tribal Historic Preservation Offices, including identification of NRHP eligible sites and development of a Cultural Resource Management Plan.

Executive Order 13007

Executive Order 13007, “Indian Sacred Sites” (May 24, 1996), requires federal land managing agencies to accommodate access to, and ceremonial use of, Indian sacred sites by Indian religious practitioners, and to avoid adversely affecting the physical integrity, accessibility, or use of sacred sites. It is important to note that a sacred site may not meet the NRHP criteria for a historic property and that, conversely, a historic property may not meet the criteria for a sacred site. It is also important to note that sacred sites may not be identified solely in consulting with tribes located within geographic proximity of the project. Tribes located outside the direct impact area the plan area may also have religiously significant ties to lands within the plan area and should be included in the consultation process.

In the Draft EA, address the existence of Indian sacred sites in the project areas, including seeps and springs, that may be considered spiritual sites by regional tribal nations. Discuss how the Forest Service would ensure that the proposed action would avoid or mitigate for the impacts to the physical integrity, accessibility, or use of sacred sites.

⁵ National Association of Tribal Historic Preservation Officers. May 2005. *Tribal Consultation: Best Practices in Historic Preservation*. Available at http://www.nathpo.org/PDF/Tribal_Consultation.pdf.